

Notices of Final Rulemaking

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Editor's Note: The following Notices of Final Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2270.)

[R14-120]

PREAMBLE

1. **Articles, Parts, and Sections Affected (as applicable)** **Rulemaking Action**
R2-8-120 New Section
2. **Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 38-714(E)(4)
Implementing statute: A.R.S. §§ 38-755, 38-760, and 38-776
3. **The effective date for the rules:**
October 4, 2014
 - a. **If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Not applicable
 - b. **If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
4. **Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 20 A.A.R. 1008, May 2, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 995, May 2, 2014
5. **The agency's contact person who can answer questions about the rulemaking:**
Name: Patrick M. Klein, Assistant Director
Address: ASRS
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2044
Fax: (602) 240-5303
E-mail: PatK@azasrs.gov
Web site: www.azasrs.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
Effective July 1, 2013, A.R.S. §§ 38-755 and 38-760 changed to require an ASRS member to name the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account and, at the time of retirement, to choose a joint and survivor annuity that names the current spouse as at least a 50 percent contingent

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annuitant. The statutes also provide a means for the current spouse to waive this right and consent to an alternative. This rulemaking implements the statutory change.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on a study in its evaluation of or justification for the rule.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

R2-8-120 simply implements statute. It is the statute that has economic impact on members and their spouses by limiting the range of choice when designating a beneficiary.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

In R2-8-120(B), language was added to track a change made to A.R.S. § 38-755 in 2014. In R2-8-120(I)(2), the word “documented” was inserted before the phrase “incapacitating mental or physical condition...” and the word “guardian” was changed to “conservator.” The first change protects a disabled spouse by clarifying that the disability must be documented. The second change makes the language consistent with Arizona law. None of these changes is substantial under the standards provided at A.R.S. § 41-1025(B).

An additional rule, R2-8-123, was included in the published notice of proposed rulemaking. It is not included in this final rulemaking. The Board intends to proceed with R2-8-123 in a supplemental proposed notice.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

No comments were made by members of the public and no one attended the oral proceeding that occurred on June 3, 2014.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit.

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law applies to retirement programs. However, there is no federal law specifically applicable to this rulemaking.

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

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TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-120. Repealed Designating a Beneficiary; Spousal Consent to Designation

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-120. Repealed Designating a Beneficiary; Spousal Consent to Designation

- A.** In addition to the definitions at A.R.S. § 38-711, the following apply to this Section unless otherwise specified:
1. "Beneficiary" means a person designated to receive money or other benefits when someone dies.
 2. "Contingent annuitant" means the person that a member designates to receive continued annuity payments after the member dies.
 3. "Joint and survivor annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
 4. "Period certain and life annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
 5. "ODRO" means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.
 6. "Spouse" means the individual to whom a member is married under Arizona law.
- B.** Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless:
 - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order;
 - or
 - b. The spouse consents to an alternate beneficiary; and
 2. Who retires shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.
- C.** Application of subsection (B).
1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
 2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
 3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- D.** Changing a beneficiary designation:
1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
 2. If a married member who retired before July 1, 2013, and:
 - a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
 - b. Chose a period certain or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).
- E.** Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:
1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
 2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).
- F.** Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.
- G.** Survivor benefits:
1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and

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2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
 - a. Notify both the spouse and designated beneficiary and:
 - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
 - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
 - b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.
- H. Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.
- I. Spousal waiver and consent; consent revocation
 1. The current spouse of a member has a right to:
 - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
 - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
 2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.
 3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

[R14-122]

PREAMBLE

- | <u>1. Article, Part, or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|--------------------------|
| Article 14 | New Article |
| R4-7-1401 | New Section |
| R4-7-1402 | New Section |
| R4-7-1403 | New Section |
| R4-7-1404 | New Section |
| R4-7-1405 | New Section |
| R4-7-1406 | New Section |
| R4-7-1407 | New Section |
| R4-7-1408 | New Section |
2. Citations to the agencies statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-904(B)(2)

Implementing statute: A.R.S. § 32-934
 3. The effective date of the rules:

October 5, 2014

 - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable
 - b. If the agency selected a date later than the 60 day effective date specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable
 4. Citation to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the